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AMINAH AHMAD v. KERAJAAN MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
FAIZAH JAMALUDIN J
[ORIGINATING SUMMONS NO: WA-24-23-04-2017]
9 JANUARY 2020

B

CONSTITUTIONAL LAW: *Legislation – Amendment – Constitutionality – Declaratory order that amendment to s. 3(1) of Pensions Adjustment Act 1980 by Pensions Adjustment (Amendment) Act 2013 ultra vires art. 147 of Federal Constitution – Whether amendments infringed fundamental rights of retired members of public services – Whether amendment resulted in 'less favourable' pension increment – Whether Parliament provided express safeguard to ensure constitutional guarantee preserved – Pensions Adjustment Act 1980, ss. 3(1), (2), (3), 6 & 7*

C

WORDS & PHRASES: *'relevant day' – Federal Constitution, art. 147 – Relevant day for person granted pension after Merdeka Day or person who first became member of any public services on or after Merdeka day – Whether date on which he first became such member*

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The plaintiff, in her personal capacity and on behalf of 56 retired members of the public services, filed an application against the defendants for: (i) a declaratory order that ss. 3 and 7 of the Pensions Adjustment (Amendment) Act 2013 ('2013 Amendment Act') are *ultra vires* art. 147 of the Federal Constitution ('FC'); (ii) a declaratory order that ss. 3 and 6 of the Pensions Adjustment Act 1980 ('PAA 1980') as amended by ss. 3 and 7 of the 2013 Amendment Act and in force since 1 January 2013 are *ultra vires* art. 147 of the FC; (iii) that the provisions of ss. 3 and 6 of the PAA 1980, prior to the amendments by ss. 3 and 7 of the 2013 Amendment Act, be restored accordingly; and (iv) that the proper adjustments be made retrospectively to the pensions received by the recipients whose pensions had been calculated based on the post 1 January 2013 formula, and any shortfall resulting therefrom be paid to the respective recipients accordingly. The plaintiff contended that the amendments to the PAA 1980 by the 2013 Amendment Act had resulted in them receiving a 'less favourable' pension increment. She argued that the 2% annual increment introduced by the 2013 Amendment Act was less than what a pensioner would receive if his pension is adjusted under the original ss. 3 and 6 of the PAA 1980. Therefore, the issue herein was whether the amendment to s. 3 and the deletion of s. 6 of the PAA 1980 by the 2013 Amendment Act was *ultra vires* art. 147 of the Federal Constitution.

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Held (dismissing application with no order as to costs):

I

(1) The Interpretation Acts 1948 and 1967 ('Interpretation Acts') applies, *inter alia*, to the interpretation of all Acts of Parliament enacted after 18 May 1967. As s. 3 of the PAA 1980 is a substantive enactment, anyone interpreting the amendment made by the 2013 Amendment Act

to s. 3 of the PAA 1980 must read the amended s. 3 in its entirety, *ie*, all the subsections that make up s. 3 and not just sub-s. 3(1) alone. Subsection 3(1) as amended by the 2013 Amendment Act changed the criteria by which pension is adjusted under the PAA 1980. It changed the statutory mechanism for the adjustment of pension from one that is based on the latest revision of an applicable salary scale to an adjustment mechanism that is based on a fixed rate of increment of 2% per annum. (paras 20-22)

(2) The natural and ordinary meaning of sub-s. 3(2) is that, notwithstanding the provision in sub-s. 3(1), in the event that the specified rate of increment of 2% per annum would result in a situation that is less favourable to an officer appointed before 1 January 2013, the Yang di-Pertuan Agong ('YDPA') may, by order in the *Gazette*, prescribe the appropriate higher percentage of increment to be applied in such a case. The new sub-s. 3A(1) of the PAA 1980 states that pension received by an officer under any written law shall be adjusted in accordance with sub-s. 3(1). Pursuant to sub-s. 3A(3), such adjustment pursuant to sub-s. 3(1) is subject to any higher percentage of increment which may be made by the YDPA under sub-s. 3(2). (paras 24 & 26)

(3) Parliament was aware that the amendment from the variable rate of pension adjustment pegged to the latest revision of the applicable salary scale to a fixed rate adjustment of 2% per annum could result in certain pensioners or their widows, children, dependants or personal representatives being put in a position that was less favourable from their position prior to the amendments in the PAA 1980 coming into effect. Therefore, Parliament expressly provided safeguard in sub-s. 3(2) of the PAA 1980 and included an express provision in sub-s. 3(3) that the YDPA may prescribe different percentages of increment for different categories of recipients in accordance with sub-s. 3(3). (paras 30-32)

(4) The statutory safeguard provided in sub-s. 3(2) of the PAA 1980 is only applicable to situations that is less favourable to an officer appointed before the coming into force of the amended s. 3, *ie*, 1 January 2013. This was because the guarantee in art. 147 of the FC states that 'the pension granted to a member of any of the public services, or to his widow, children, dependant or personal representatives shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made.' Article 147 of the FC stipulated that 'relevant day' for a person who was granted his pension after Merdeka Day is 'the date on which he first became such a member.' Therefore, any officer appointed after 1 January 2013 would not be in a position that is less favourable by virtue of the amendment to the PAA 1980 since the pension granted to him is that in force on the day he became a member. (paras 33 & 34)

(5) Therefore, ss. 3 and 7 of the 2013 Amendment Act are not *ultra vires* art. 147 of the FC. The court also found that s. 3 of the PAA 1980 as amended by s. 3 of the 2013 Amendment Act is not *ultra vires* art. 147 of the FC. Section 6 of the PAA 1980 was not amended by s. 7 of the 2013 Amendment Act, but it was deleted. Therefore, it was impossible for the court to make a declaration that s. 6 of the PAA 1980 as amended by s. 7 of the 2013 Amendment Act is *ultra vires* art. 147 of the FC. (paras 35-37)

Case(s) referred to:
Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

Legislation referred to:
Federal Constitution, art. 147
Interpretation Acts 1948 and 1967, s. 14
Pensions Adjustment Act 1980, ss. 2, 3(1), (2), (3), 3A(1), (2)(a), (b), (3), 3B, 6

For the plaintiff - Lim Choon Khim & Chin Yan Leng; M/s Chooi, Saw & Lim
For the defendants - Shamsul Bolhassan; SFC

Reported by S Barathi

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] This is an application by the plaintiff, Aminah binti Ahmad, in her personal capacity and on behalf of 56 retired members of the public services, against the defendants, the Government of Malaysia and the Director General of Public Services.

[2] In her originating summons, the plaintiff applies for the following reliefs:

(i) a declaratory order that ss. 3 and 7 of the Pensions Adjustment (Amendment) Act 2013 are *ultra vires* art. 147 of the Federal Constitution;

(ii) a declaratory order that ss. 3 and 6 of the Pensions Adjustment Act 1980 as amended by ss. 3 and 7 of the Pensions Adjustment (Amendment) Act 2013 and in force since 1 January 2013 are *ultra vires* art. 147 of the Federal Constitution;

(iii) that the provisions of ss. 3 and 6 of the Pensions Adjustment Act 1980, prior to the amendments by ss. 3 and 7 of the Pensions Adjustment (Amendment) Act 2013, be restored accordingly; and

(iv) that the proper adjustments be made retrospectively to the pensions received by the recipients whose pensions had been calculated based on the post 1 January 2013 formula, and any shortfall resulting therefrom be paid to the respective recipients accordingly.

[3] It is the plaintiff's case that the amendment to s. 3(1) and the deletion of s. 6 of the Pensions Adjustment Act 1980 (Act 238) ("PAA 1980") by the Pensions Adjustment (Amendment) Act 2013 (Act A1447) ("2013 Amendment Act") are *ultra vires* art. 147 of the Federal Constitution.

Article 147 Of The Federal Constitution

[4] Article 147 of the Federal Constitution states as follows:

147 Protection of pension rights

(1) **The law applicable to any pension**, gratuity or other like allowance (in this Article referred to as an "award") **granted to a member of any of the public services**, or to his widow, children, dependant or personal representatives, **shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made**.

(2) For the purposes of this Article the **relevant day** is:

(a) in relation to an award made **before Merdeka Day, the date on which the award was made**;

(b) in relation to an award made **after Merdeka Day** to or in respect of **any person who was a member of any of the public services before Merdeka Day, the thirtieth day of August, nineteen hundred and fifty-seven**;

(c) in relation to an award made to or in respect of any person who first became a member of any of the public services **on or after Merdeka Day, the date on which he first became such a member**.

(3) For the purposes of this Article, where the law applicable to an award depends on the option of the person to whom it is made, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

(emphasis added)

Amendments To The Pension Adjustment Act 1980

[5] Section 3 of the PAA 1980 was amended in 2013 by s. 3 of the 2013 Amendment Act and s. 6 of the PAA 1980 was deleted by s. 7 of the 2013 Amendment Act. The said amendment and deletion came into effect on 1 January 2013.

[6] The PAA 1980 had been amended four times prior to its amendment by the 2013 Amendment Act. It was amended previously by the Pensions Adjustment (Amendment) Act 1983 (Act A568) ("the 1983 Amendment

Act"), the Pensions Adjustment (Amendment) Act 2002 (Act A1169) ("the 2002 Amendment Act"), the Pensions Adjustment (Amendment) Act 2009 (Act A1345) ("the 2009 Amendment Act") and the Pensions Adjustment (Amendment) Act 2011 (Act A1411) ("the 2009 Amendment Act") (collectively referred to as "the previous amendment acts").

[7] The provisions in ss. 3 and 6 of the PAA 1980 prior to the amendment and deletion by the 2013 Amendment Act were made by the 1983 Amendment Act, which amended the original ss. 3 and 6 of the PAA 1980 to the following:

> 3. Adjustment of pensions and other benefits of officers and dependants
>
> (1) Pensions and other benefits granted to officers and their dependants under any written law before or on the implementation of any current salary scale shall be adjusted in accordance with the provisions of this Act and shall be paid or be payable with effect from the date of implementation of the current salary scale.
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> (2) The pension or retiring allowance of an officer shall be adjusted as provided in the First Schedule.
>
> ...
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> 6. Determination of corresponding last drawn salary
>
> (1) The Director General shall determine the corresponding last drawn salary of an officer.
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> (2) For the purposes of this Act, "corresponding last drawn salary" means, in the case of an officer to whom the current salary scale does not apply by virtue of-
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> (a) his not having had an opportunity to opt;
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> (b) his not having opted; or
>
> (c) his not being deemed to have opted,
>
> for the current salary scale, the equivalent salary that the officer would have drawn under the current salary scale prior to death in service or to retirement had he been in service on the implementation of the current salary scale and had it been applied to him.

[8] As well as deleting s. 6 of the PAA 1980, the 2013 Amendment Act made a corresponding deletion to the definition of "corresponding last drawn salary" in s. 2 of the PAA 1980.

[9] The 2013 Amendment Act amended s. 3 of the PAA 1980 to the following:

> 3. Adjustment of pensions and other benefits of officers and dependants
>
> (1) *Pensions and other benefits granted to officers and their dependants under any written law shall be adjusted annually by an increment of two percent in accordance with the provisions of this Act* and shall be paid or be payable with effect from January of each year.

(2) *Notwithstanding subsection (1), where the application of the specified rate of increment would result in a situation that is less favourable to an officer appointed before the coming into force of this section*, the *Yang di-Pertuan Agong may by order in the Gazette prescribe an appropriate higher percentage of increment to be applied in such case*.

(3) For the purpose of an order under subsection (2), the Yang di-Pertuan Agong may prescribe:

(a) different percentages of increment for different categories of recipients;

(b) that the higher percentage of increment shall only apply for a specified year or any part thereof, and in such case, the date on which the adjustment shall be payable.

(emphasis added)

[10] Additionally, the 2013 Amendment Act introduced new ss. 3A and 3B to the PAA 1980, which sections read as follows:

3A. Adjustment of pensions, disability pensions, retiring allowances or injury allowances

(1) *Pensions*, disability pensions, retiring allowances or injury allowances received by an officer under any written law *shall be adjusted in accordance with subsection 3(1)*.

(2) *The amount of pension*, disability pension, retiring allowance or injury allowance *to be used as the basis for the first of the adjustments under subsection 3(1)*:

(a) *in the case of an officer who retired before or on 1 January 2012, shall be the amount of pension*, disability pension, retiring allowance or injury allowance *which had been adjusted on that date*;

(b) *in the case of an officer who retired on or after 2 January 2012, shall be the amount of pension*, disability pension, retiring allowance or injury allowance *which had been granted to the officer*.

(3) The adjustment referred to in subsection (1) *is subject to any higher percentage of increment which may be made under subsection 3(2)*.

3B. Adjustment of lowest pensions and other benefits

Where an officer is receiving the lowest amount of pension or other benefit payable pursuant to section 8, the said lowest amount shall be used as the basis for the first of the adjustments under subsection 3(1).

(emphasis added)

The Plaintiff's Case

[11] The plaintiff contends that the amendments to the PAA 1980 made by the 2013 Amendment Act had infringed her fundamental rights, and that of the other 56 retired members of the public services that she is representing, which rights are guaranteed under art. 147 of the Federal Constitution. This

is because the amendments to the PAA 1980 by the 2013 Amendment Act had resulted in them receiving a "less favourable" pension increment. She argues that the 2% annual increment introduced by the 2013 Amendment Act is less than what a pensioner would receive if his pension is adjusted under the original ss. 3 and 6 of the PAA 1980.

[12] The plaintiff in para. 14 of her affidavit affirmed on 27 April 2017 ("plaintiff's affidavit in support") illustrates the calculation in respect of an officer of the public service who retired at the grade "Jusa C", which she avers shows that the implementation of the 2% annual rate of pension increment is less favourable than the adjustment of pension based on salary revision prior to the amendments made by the 2013 Amendment Act. The officer in the illustration commenced his service on 5 November 1971 and retired on 7 July 2004.

[13] In para. 5 of her further affidavit affirmed on 28 February 2019 ("plaintiff's affidavit (2)"), the plaintiff provides a further illustration of a pensioner who retired at grade "Jusa C". However, she did not state when this pensioner commenced his service and when he retired from service. She says that the said pensioner was drawing a pension of RM4,763.47 on 31 December 2011 and that following a salary revision on 1 January 2012, the pensioner's pension was adjusted to RM7,200 under the PAA 1980, which represented a 51.15% adjustment of his original pension as opposed to the 2% annual increment pursuant the amendment to the PAA 1980 by the 2013 Amendment Act. Further, she says that "if the pension of RM4,763.47 is increased annually by 2%, it will take approximately ten years to reach the pension of RM7,200."

[14] The plaintiff in para. 5 of her further affidavit in reply affirmed on 29 April 2019 ("plaintiff's affidavit (3)") avers the PAA 1980 prior to the amendment by the 2013 Amendment Act (which she refers to in the affidavit as "the pre-amended Act") introduced "a new two-pronged principle that pensions be adjusted on current salaries and intricately linked to their respective grade and rank in the civil service. This gave the pensioners an assurance of enjoying a continuous pension of comparable amounts to those retired subsequently on similar grades and ranks."

The Defendants' Case

[15] The defendants' case is that prior to the PAA 1980, there were no provisions for the adjustment of pensions granted. The defendants submit that prior to 1980, the legislation on pension in force by virtue of the Pension Ordinance 1951 involved two principles namely, (a) grant of pension and (b) computation of pension, gratuity and other benefits in accordance with the regulations.

[16] The defendants argue that the amendments to the PAA 1980 by the 2013 Amendment Act does not alter the plaintiff's and the other pensioners' rights as pensioners. The defendants say that the amendments to the PAA 1980 give the pensioners an annual increment of 2% to their pensions.

[17] The defendants submit that as the amendments by the 2013 Amendment Act to the PAA 1980 had not reduced the amount of the pensioners' pension so as to put them in a less favourable position than prior to the amendments in question, the plaintiff's application should be dismissed.

Analysis

[18] The issue before this court is whether the amendment to s. 3 and the deletion of s. 6 of the PAA 1980 by the 2013 Amendment Act is *ultra vires* art. 147 of the Federal Constitution.

[19] The plaintiff has moved this court to determine the constitutionality of the amendment to s. 3 of the PAA 1980 and the deletion of s. 6 of the PAA 1980 by the 2013 Amendment Act. The Federal Court in the landmark case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Ulu Langat & Another Case* [2017] 5 CLJ 526 reiterated that it is a basic principle of statutory interpretation that there is always a strong presumption in favour of the constitutionality of provisions in a statute. Zainun Ali FCJ in delivering the decision of the Federal Court explained the principle as follows:

> [93] *The preliminary position is that there is always a strong presumption in favour of the constitutionality of provisions in a statute. This is premised on the principle that Parliament cannot be presumed to intend an unconstitutional action*. The burden is upon him who challenges the provision to show that they are unconstitutional (*PP v. Pung Chen Choon* [1994] 1 LNS 208; [1994] 1 MLJ 566, *Ooi Kean Thong & Anor v. PP* [2006] 2 CLJ 701; [2006] 3 MLJ 389, *PP v. Azmi Sharom* [2015] 8 CLJ 921). The court's function is merely to test the legality of an action against principles and standards established by the Constitution. Unless it is found that there has been a clear transgression of constitutional principles, the court would refrain from declaring the law as legislated by the Legislature to be invalid.
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> (emphasis added)

[20] The Interpretation Acts 1948 and 1967 ("the Interpretation Acts") applies *inter alia* to the interpretation of all Acts of Parliament enacted after 18 May 1967. Section 14 of the Interpretation Act provides that:

> Every Act shall be divided into sections, each of which shall have effect as a substantive enactment without any introductory words.

[21] Therefore, as s. 3 of the PAA 1980 is a substantive enactment, anyone interpreting the amendment made by the 2013 Amendment Act to s. 3 of the PAA 1980 must read the amended s. 3 in its entirety ie, all the subsections that make up s. 3 and not just sub-s. 3(1) alone.

[22] Subsection 3(1) as amended by the 2013 Amendment Act changed the criteria by which pension is adjusted under the PAA 1980. It changed the statutory mechanism for the adjustment of pension from one that is based on the latest revision of an applicable salary scale to an adjustment mechanism that is based on a fixed rate of increment of 2% per annum.

[23] Subsections 3(2) and 3(3) of the PAA 1980 as amended by the 2013 Amendment Act stipulates that:

> (2) Notwithstanding subsection (1), *where the application of the specified rate of increment would result in a situation that is less favourable to an officer appointed before the coming into force of this section, the Yang di-Pertuan Agong may by order in the Gazette prescribe an appropriate higher percentage of increment to be applied in such case*.
>
> (3) For the purpose of an order under subsection (2), the Yang di-Pertuan Agong may prescribe:
>
> (a) **different percentages of increment for different categories of recipients**;
>
> (b) that **the higher percentage of increment shall only apply for a specified year or any part thereof, and in such case, the date on which the adjustment shall be payable**.
>
> (emphasis added)

[24] The natural and ordinary meaning of sub-s. 3(2) is that notwithstanding the provision in sub-s. 3(1), in the event that the specified rate of increment of 2% per annum, would result in a situation that is less favourable to an officer appointed before 1 January 2013, His Majesty the Yang di-Pertuan Agong ("YDPA") may by order in the *Gazette* prescribe the appropriate higher percentage of increment to be applied in such a case.

[25] Subsection 3(3) expressly states that for the purpose of the order in sub-s. 3(2), His Majesty the YDPA may (i) prescribe different percentages of increment for different categories of recipient, and His Majesty may also (ii) prescribe that the higher percentage of increment shall only apply for a specified year or any part thereof, and in such case, the date on which the adjustment shall be payable.

[26] The new sub-s. 3A(1) of the PAA 1980 states that pension received by an officer under any written law shall be adjusted in accordance with sub-s. 3(1). Pursuant to sub-s. 3A(3) such adjustment pursuant to sub-s. 3(1) is subject to any higher percentage of increment which may be made by His Majesty the YDPA under sub-s. 3(2).

[27] Therefore, if the plaintiff and/or any other pensioners find that as a result of the amendment in the pension adjustment mechanism to a fixed increment rate of 2% per annum had resulted in them being put in a position that is less favourable than their position prior to the amendment to

sub-s. 3(1) of the PAA 1980, any such pensioner can apply to the defendants for a higher percentage of increment to be gazetted by order of the YDPA under sub-s. 3(2) of the PAA 1980.

[28] As regards the officer who retired at grade "Jusa C" used by the plaintiff in plaintiff's affidavit (2) to illustrate her point that the amendment to s. 3 of the PAA 1980 by the 2013 Amendment Act resulted in a less favourable position to the plaintiff and her fellow pensioners, I must point out that sub-s. 3A(2)(a) of the PAA 1980 stipulates that the basis for the first of his adjustments under sub-s. 3(1) shall be his pension that had been adjusted on 1 January 2012, which in the plaintiff's example is RM7,200. The plaintiff says that the pensioner was drawing a pension of RM4,763.47 on 31 December 2011 and claims that based on the amendment to s. 3 of the PAA 1980 of an annual increment of 2% per annum, it would have taken ten years for the "Jusa C" officer's pension to be adjusted to RM7,200.

[29] With respect to the plaintiff, her claim is incorrect. Based on the provision in the new sub-s. 3A(2)(a) of the PAA 1980, the pension of the "Jusa C" officer in her example would be adjusted at the rate of 2% per annum from 1 January 2013 based on the pension sum that was adjusted on 1 January 2012 ie, RM7,200 and not RM4,763.47. Therefore, the plaintiff's averment that it will take ten years from 1 January 2013 for the officer's pension to be adjusted to RM7,200 by reason of the amendments made to the PAA 1980 by the 2013 Amendment Act is erroneous.

[30] It is clear to me on reading the amended sub-ss. 3(1), 3(2) and 3(3) in its entirety together with the new sub-ss. 3A(1), 3A(2)(a), 3A(2)(b), and 3A(3) that Parliament was aware that the amendment from the variable rate of pension adjustment pegged to the latest revision of the applicable salary scale to a fixed rate adjustment of 2% per annum could result in certain pensioners or their widows, children, dependants or personal representatives being put in a position that is less favourable from their position prior to the amendments in the PAA 1980 coming into effect.

[31] Therefore, in order to ensure that the constitutional guarantee enshrined in art. 147 of the Federal Constitution is preserved and to protect against the likelihood of situations where pensioners or their widows, children, dependants or personal representatives are put in a less favourable position because of the change to the annual fixed rate pension adjustment, Parliament expressly provided a safeguard in sub-s. 3(2) of the PAA 1980.

[32] As discussed above, the statutory safeguard provided by Parliament is that pursuant to sub-s. 3(2) of the PAA 1980, His Majesty the YDPA may by order in the *Gazette* prescribe the appropriate higher percentage of increment to an officer appointed before 1 January 2013 in the event that the fixed rate increment of 2% per annum results in a situation that is less favourable to the said officer or his widow, children, dependant or personal representatives. Additionally, for the purpose of the order in the *Gazette*

pursuant to sub-s. 3(2) of the PAA 1980, Parliament included an express provision in sub-s. 3(3) that His Majesty the YDPA may prescribe different percentages of increment for different categories of recipients in accordance with sub-s. 3(3).

[33] Why is the statutory safeguard provided in sub-s. 3(2) of the PAA 1980 applicable only to situations that is less favourable to an officer appointed before the coming into force of the amended s. 3 ie, 1 January 2013? This is because the guarantee in art. 147 of the Federal Constitution states that "the pension granted to a member of any of the public services, or to his widow, children, dependant or personal representatives shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made."

[34] Article 147 of the Federal Constitution stipulates that "relevant day" for a person who was granted his pension after Merdeka Day or a person who first became a member of any of public services on or after Merdeka Day is "the date on which he first became such a member." Therefore, any officer appointed after 1 January 2013 would not be in a position that is less favourable by virtue of the amendments to the PAA 1980 since the pension granted to him is that in force on the day he became a member.

Decision

[35] For the reasons above, I find that ss. 3 and 7 of the Pensions Adjustment (Amendment) Act 2013 are not *ultra vires* art. 147 of the Federal Constitution.

[36] I also find that s. 3 of the Pensions Adjustment Act 1980 as amended by s. 3 of the Pensions Adjustment (Amendment) Act 2013 is not *ultra vires* art. 147 of the Federal Constitution.

[37] The plaintiff had also prayed for a declaration that s. 6 of the Pensions Adjustment Act 1980 as amended by s. 7 the Pensions Adjustment (Amendment) Act 2013 is *ultra vires* art. 147 of the Federal Constitution. Section 6 of the PAA 1980 was not amended by s. 7 of the 2013 Amendment Act, it was deleted. Therefore, since s. 6 had been deleted, it is impossible for this court to make a declaration that s. 6 of the Pensions Adjustment Act 1980 as amended by s. 7 of the Pensions Adjustment (Amendment) Act 2013 is *ultra vires* art. 147 of the Federal Constitution.

[38] The plaintiff's application is accordingly dismissed.

[39] There is no order as to costs.